
HOUSE BILL No. 1268

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-28-35; IC 6-1.1-45-13; IC 6-3; IC 6-3.1.

Synopsis: Railroad redevelopment zones. Authorizes the Indiana economic development corporation to designate railroad redevelopment zones along freight rail lines that are the subjects of petitions to the Federal Surface Transportation Board for permission to discontinue freight rail service on the rail line or to abandon the rail line. Provides that certain businesses and their employees are entitled to certain tax incentives as if the business were located in an enterprise zone. Provides for the administration of the railroad redevelopment zones by the board of the Indiana economic development corporation. Provides that incentive recipients are subject to a fee imposed by the board. Requires the Indiana department of transportation to update the state's rail plan before January 1, 2012.

Effective: July 1, 2010; January 1, 2011.

Koch, Blanton

January 12, 2010, read first time and referred to Committee on Interstate and International Cooperation.

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Second Regular Session 116th General Assembly (2010)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2009 Regular and Special Sessions of the General Assembly.

HOUSE BILL No. 1268

A BILL FOR AN ACT to amend the Indiana Code concerning economic development.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 5-28-35 IS ADDED TO THE INDIANA CODE AS
2 A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE
3 JANUARY 1, 2011]:

4 **Chapter 35. Railroad Redevelopment Zones**

5 **Sec. 1. The definitions set forth in IC 5-28-15-1 apply**
6 **throughout this chapter.**

7 **Sec. 2. As used in this chapter, "eligible area" means the**
8 **geographic corridor along a rail line that is the subject of a petition**
9 **to the Federal Surface Transportation Board for permission to**
10 **discontinue freight rail service on the rail line or to abandon the**
11 **rail line.**

12 **Sec. 3. As used in this chapter, "eligible entity" means a business**
13 **located in an eligible area that commits to using freight rail service**
14 **on a rail line described in section 2 of this chapter.**

15 **Sec. 4. As used in this chapter, "zone business" means an**
16 **eligible entity that accesses at least one (1) tax credit, deduction, or**
17 **exemption incentive available under this chapter, IC 6-1.1-45,**



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IC 6-3-2-8, IC 6-3-3-10, IC 6-3.1-7, IC 6-3.1-9, or IC 6-3.1-10.

Sec. 5. As used in this chapter, "zone" means a railroad redevelopment zone designated by the board under section 6 of this chapter.

Sec. 6. (a) The board may designate an eligible area as a railroad redevelopment zone at any time after receiving notice that the rail line through the eligible area is the subject of a petition described in section 2 of this chapter.

(b) Except as provided in section 8 of this chapter, the geographic area of a railroad redevelopment zone designated under this section consists of the territory located within one-fourth (1/4) mile of the rail line for the entire length of the rail line that is the subject of a petition described in section 2 of this chapter.

(c) A railroad redevelopment zone expires ten (10) years after the day on which it is designated by the board.

Sec. 7. The board has the following powers, in addition to other powers that are contained in this article:

(1) To designate railroad redevelopment zones according to the criteria for designation that this chapter provides.

(2) To waive or modify rules as provided in this chapter.

(3) To provide a procedure by which railroad redevelopment zones may be monitored and evaluated on an annual basis.

(4) To adopt rules for the disqualification of a zone business from eligibility for any or all incentives available to zone businesses, if that zone business does not do one (1) of the following:

(A) If all its incentives, as contained in the summary required under section 10 of this chapter, exceed one thousand dollars (\$1,000) in any year, pay a registration fee to the board in an amount equal to one percent (1%) of all its incentives.

(B) Use all its incentives, except for the amount of the registration fee, for its property or employees in the zone.

(C) Remain open and operating as a zone business for twelve (12) months of the assessment year for which the incentive is claimed.

(5) To disqualify a zone business from eligibility for any or all incentives available to zone businesses in accordance with the procedures set forth in the board's rules.

(6) To employ staff and contract for services for the administration of the railroad redevelopment zone program.

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(7) To receive funds from any source and expend the funds for the administration and promotion of the railroad redevelopment zone program.

Sec. 8. The board may modify a railroad redevelopment zone boundary if the board determines that the modification is in the best interests of the zone.

Sec. 9. An eligible entity or an employee of an eligible entity is entitled to the benefits provided by the following statutes, as if the eligible entity were located in an enterprise zone:

(1) IC 6-1.1-45.

(2) IC 6-3-2-8.

(3) IC 6-3-3-10.

(4) IC 6-3.1-7.

(5) IC 6-3.1-9.

(6) IC 6-3.1-10-6.

Sec. 10. (a) Subject to subsections (c) and (d), a zone business that claims any of the incentives available to zone businesses shall, by letter postmarked before June 1 of each year:

(1) submit to the board, on a form prescribed by the board, a verified summary concerning the amount of tax credits and exemptions claimed by the business in the preceding year; and

(2) pay the amount specified in section 7(4)(A) of this chapter to the board.

(b) In order to determine the accuracy of the summary submitted under subsection (a), the board is entitled to obtain copies of a zone business's tax records directly from the department of state revenue, the department of local government finance, or a county official, notwithstanding any other law. A summary submitted to a board or a record obtained by the board under this section is confidential. A board member or employee of the corporation who knowingly or intentionally discloses information that is confidential under this section commits a Class A misdemeanor.

(c) The board may grant one (1) extension of the time allowed to comply with subsection (a). To qualify for an extension, a zone business must apply to the board by letter postmarked before June 1. The application must be in the form specified by the board. The extension may not exceed forty-five (45) days under rules adopted by the board under IC 4-22-2.

(d) If a zone business that did not comply with subsection (a) before June 1 and did not file for an extension under subsection (c) before June 1 complies with subsection (a) before July 16, the

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amount of the tax credit and exemption incentives for the preceding year that were otherwise available to the zone business because the business was a zone business are waived, unless the zone business pays to the board a penalty of fifteen percent (15%) of the amount of the tax credit and exemption incentives for the preceding year that were otherwise available to the zone business because the business was a zone business. A zone business that pays a penalty under this subsection for a year must pay the penalty to the board before July 16 of that year. The board shall deposit any penalty payments received under this subsection in the railroad development zone fund.

(e) This subsection is in addition to any other sanction imposed by subsection (d) or any other law. If a zone business fails to comply with subsection (a) before July 16 and does not pay any penalty required under subsection (d) by letter postmarked before July 16 of that year, the zone business is:

(1) denied all the tax credit and exemption incentives available to a zone business because the business was a zone business for that year; and

(2) disqualified from further participation in the railroad redevelopment zone program under this chapter until the zone business:

(A) petitions the board for readmission to the railroad redevelopment zone program under this chapter; and

(B) pays a civil penalty of one hundred dollars (\$100).

Sec. 11. (a) The railroad redevelopment zone fund is established within the state treasury.

(b) The fund consists of:

(1) the revenue from the registration fee required under section 7(4)(A) of this chapter;

(2) penalties deposited in the fund under section 10 of this chapter; and

(3) appropriations from the general assembly.

(c) The corporation shall administer the fund. The fund may be used to:

(1) pay the expenses of administering the fund;

(2) pay nonrecurring administrative expenses of the railroad redevelopment zone program; and

(3) provide grants for brownfield remediation in railroad redevelopment zones.

However, money in the fund may not be expended unless it has been appropriated by the general assembly and allotted by the

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1 budget agency.

2 (d) The treasurer of state shall invest the money in the fund not
3 currently needed to meet the obligations of the fund in the same
4 manner as other public funds may be invested. Interest that
5 accrues from these investments shall be deposited in the fund.

6 (e) Money in the fund at the end of a state fiscal year does not
7 revert to the state general fund. The corporation shall develop
8 appropriate applications and may develop grant allocation
9 guidelines, without complying with IC 4-22-2, for awarding grants
10 under this subsection. The grant allocation guidelines must take
11 into consideration the competitive impact of brownfield
12 redevelopment plans on existing zone businesses.

13 Sec. 12. (a) This section applies to records and other
14 information, including records and information that are otherwise
15 confidential, maintained by the following:

- 16 (1) The board.
- 17 (2) The department of state revenue.
- 18 (3) The corporation.
- 19 (4) The department of local government finance.
- 20 (5) A county auditor.
- 21 (6) A township assessor (if any).
- 22 (7) A county assessor.

23 (b) A person or an entity listed in subsection (a) may request
24 another person or entity described in subsection (a) to provide any
25 records or other information maintained by the second person or
26 entity that concern an individual or a business that is receiving a
27 tax deduction, exemption, or credit related to a railroad
28 redevelopment zone. Notwithstanding any other law, the person or
29 entity to whom the request is made under this section shall comply
30 with the request. A person or entity receiving records or
31 information under this section that are confidential shall also keep
32 the records or information confidential.

33 (c) A person or an entity that receives confidential records or
34 information under this section and knowingly or intentionally
35 discloses the records or information to an unauthorized person
36 commits a Class A misdemeanor.

37 Sec. 13. (a) Any business that substantially reduces or ceases an
38 operation located in Indiana and outside a railroad redevelopment
39 zone (referred to as a nonzone operation) in order to relocate in an
40 Indiana railroad redevelopment zone is disqualified from benefits
41 or incentives available to zone businesses. Determinations under
42 this section shall be made by a hearing panel composed of the

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1 chairperson of the board or the chairperson's designee, the
 2 commissioner of the department of state revenue or the
 3 commissioner's designee, and the commissioner of the department
 4 of local government finance or the commissioner's designee. The
 5 panel, after an evidentiary hearing held subsequent to the
 6 relocation of the business, shall submit a recommended order to
 7 the board for its adoption. The recommended order shall be based
 8 on the following criteria and subsection (b):

9 (1) A site specific economic activity, including sales, leasing,
 10 service, manufacturing, production, storage of inventory, or
 11 any activity involving permanent full-time or part-time
 12 employees shall be considered a business operation.

13 (2) With respect to a nonzone operation, any of the following
 14 that occurs during the twelve (12) months before the
 15 completion of the physical relocation of all or part of the
 16 activity described in subdivision (1) from the nonzone
 17 operation to the enterprise zone as compared with the twelve
 18 (12) months before that twelve (12) months is considered a
 19 substantial reduction:

20 (A) A reduction in the average number of full-time or
 21 part-time employees of the lesser of:

22 (i) one hundred (100) employees; or

23 (ii) twenty-five percent (25%) of all employees.

24 (B) A twenty-five percent (25%) reduction in the average
 25 number of goods manufactured or produced.

26 (C) A twenty-five percent (25%) reduction in the average
 27 value of services provided.

28 (D) A ten percent (10%) reduction in the average value of
 29 stored inventory.

30 (E) A twenty-five percent (25%) reduction in the average
 31 amount of gross income.

32 (b) Notwithstanding subsection (a), a business that would
 33 otherwise be disqualified under subsection (a) is eligible for
 34 benefits and incentives available to zone businesses if each of the
 35 following conditions is met:

36 (1) The business relocates its nonzone operation for any of the
 37 following reasons:

38 (A) The lease on property necessary for the nonzone
 39 operation has been involuntarily lost through no fault of
 40 the business.

41 (B) The space available at the location of the nonzone
 42 operation cannot accommodate planned expansion needed

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by the business.

(C) The building for the nonzone operation has been certified as uninhabitable by a state or local building authority.

(D) The building for the nonzone operation has been totally destroyed through no fault of the business.

(E) The renovation and construction costs at the location of the nonzone operation are more than one and one-half (1 1/2) times the costs of purchase, renovation, and construction of a facility in the zone, as certified by three (3) independent estimates.

A business is eligible for benefits and incentives under clause (C) or (D) only if renovation and construction costs at the location of the nonzone operation are more than one and one-half (1 1/2) times the cost of purchase, renovation, and construction of a facility in the zone. These costs must be certified by three (3) independent estimates.

(2) The business has not terminated or reduced the pension or health insurance obligations payable to employees or former employees of the nonzone operation without the consent of the employees.

(c) The hearing panel shall cause to be delivered to the business and to any person who testified before the panel in favor of disqualification of the business a copy of the panel's recommended order. The business and these persons shall be considered parties for purposes of this section.

(d) A party who wishes to oppose the board's adoption of the recommended order of the hearing panel shall, not later than ten (10) days after the party's receipt of the recommended order, file written objections with the board. If the objections are filed, the board shall set the objections for oral argument and give notice to the parties. A party at its own expense may cause to be filed with the board a transcript of the oral testimony or any other part of the record of the proceedings. The oral argument must be on the record filed with the board. The board may hear additional evidence or remand the action to the hearing panel with instructions appropriate to the expeditious and proper disposition of the action. The board may adopt the recommendations of the hearing panel, may amend or modify the recommendations, or may make an order or determination as is proper on the record.

(e) If no objections are filed, the board may adopt the recommended order without oral argument. If the board does not

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adopt the proposed findings of fact and recommended order, the parties shall be notified and the action shall be set for oral argument as provided in subsection (d).

(f) The final determination made by the board shall be made by a majority of the quorum needed for board meetings.

Sec. 14. The state pledges to and agrees with the direct recipient of any railroad redevelopment zone incentive under this chapter that the state will not limit or alter the rights vested in the board to fulfill the terms of any agreements it makes with those recipients or in any way impair the rights and remedies of those recipients until the terms of the incentive are fulfilled. The board may include this pledge and agreement of the state in any agreement it makes with the recipient.

SECTION 2. IC 6-1.1-45-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 13. Notwithstanding any provision of this chapter, a person making an investment in a railroad redevelopment zone is eligible for a deduction under this chapter as if the investment had been made in an enterprise zone. A taxpayer may claim a deduction for an investment in a railroad redevelopment zone in the manner prescribed by this chapter.

SECTION 3. IC 6-3-2-8, AS AMENDED BY P.L.182-2009(ss), SECTION 194, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 8. (a) For purposes of this section, "qualified employee" means an individual who is employed by a taxpayer, a pass through entity, an employer exempt from adjusted gross income tax (IC 6-3-1 through IC 6-3-7) under IC 6-3-2-2.8(3), IC 6-3-2-2.8(4), or IC 6-3-2-2.8(5), a nonprofit entity, the state, a political subdivision of the state, or the United States government and who ~~(+) has~~ satisfies either of the following conditions:

(1) In the case of an individual employed in an enterprise zone, the individual must do the following:

(A) Maintain the employee's principal place of residence in the enterprise zone in which the employee is employed.

~~(2) performs~~ (B) Perform services for the taxpayer, the employer, the nonprofit entity, the state, the political subdivision, or the United States government, ninety percent (90%) of which are directly related to:

~~(A)~~ (i) the conduct of the taxpayer's or employer's trade or business; or

~~(B)~~ (ii) the activities of the nonprofit entity, the state, the political subdivision, or the United States government;

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that is located in an enterprise zone. ~~and~~

~~(3) performs~~ **(C) Perform** at least fifty percent (50%) of the employee's service for the taxpayer or employer during the taxable year in the enterprise zone.

(2) In the case of an individual employed in a railroad redevelopment zone, the individual must do the following:

(A) Perform services for an eligible entity (as defined by IC 5-28-35-3), ninety percent (90%) of which are directly related to the conduct of the eligible entity's trade or business that is located in a railroad redevelopment zone.

(B) Perform at least fifty percent (50%) of the individual's service for the eligible entity (as defined by IC 5-28-35-3) during the taxable year in the railroad redevelopment zone.

(b) Except as provided in subsection (c), a qualified employee is entitled to a deduction from the employee's adjusted gross income in each taxable year in the amount of the lesser of:

- (1) one-half (1/2) of the employee's adjusted gross income for the taxable year that the employee earns as a qualified employee; or
- (2) seven thousand five hundred dollars (\$7,500).

(c) No qualified employee is entitled to a deduction under this section for a taxable year that begins after the termination of the:

- (1) enterprise zone in which the employee resides; or**
- (2) railroad redevelopment zone in which the eligible entity employing the qualified employee is located.**

SECTION 4. IC 6-3-3-10.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: **Sec. 10.5. Notwithstanding section 10 of this chapter, a taxpayer who incurs qualified increased employment expenditures in a railroad redevelopment zone is eligible for a credit under section 10 of this chapter as if the expenditures had been incurred in an enterprise zone. A taxpayer may claim a credit for expenditures incurred in a railroad redevelopment zone in the manner prescribed by section 10 of this chapter.**

SECTION 5. IC 6-3.1-7-1, AS AMENDED BY P.L.4-2005, SECTION 51, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. As used in this chapter:

"Enterprise zone" means an enterprise zone created under IC 5-28-15 **or a railroad redevelopment zone created under IC 5-28-35.**

"Pass through entity" means a:

- (1) corporation that is exempt from the adjusted gross income tax

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- under IC 6-3-2-2.8(2);
- (2) partnership;
- (3) trust;
- (4) limited liability company; or
- (5) limited liability partnership.

"Qualified loan" means a loan made to an entity that uses the loan proceeds for:

- (1) a purpose that is directly related to a business located in an enterprise zone;
- (2) an improvement that increases the assessed value of real property located in an enterprise zone; or
- (3) rehabilitation, repair, or improvement of a residence.

"State tax liability" means a taxpayer's total tax liability that is incurred under:

- (1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax);
- (2) IC 27-1-18-2 (the insurance premiums tax); and
- (3) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

"Taxpayer" means any person, corporation, limited liability company, partnership, or other entity that has any state tax liability. The term includes a pass through entity.

SECTION 6. IC 6-3.1-9-1, AS AMENDED BY P.L.1-2007, SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. (a) As used in this chapter, "authority" means the Indiana housing and community development authority established by IC 5-20-1-3.

(b) As used in this chapter, "business firm" means any business entity authorized to do business in the state of Indiana that has state tax liability.

(c) As used in this chapter, "community services" means any type of:

- (1) counseling and advice;
- (2) emergency assistance;
- (3) medical care;
- (4) recreational facilities;
- (5) housing facilities; or
- (6) economic development assistance;

provided to individuals, economically disadvantaged households, groups, or neighborhood organizations in an economically disadvantaged area.

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(d) As used in this chapter, "crime prevention" means any activity which aids in the reduction of crime in an economically disadvantaged area or an economically disadvantaged household.

(e) As used in this chapter, "economically disadvantaged area" means an enterprise zone, or any other federally or locally designated economically disadvantaged area in Indiana. The certification shall be made on the basis of current indices of social and economic conditions, which shall include but not be limited to the median per capita income of the area in relation to the median per capita income of the state or standard metropolitan statistical area in which the area is located.

(f) As used in this chapter, "economically disadvantaged household" means a household with an annual income that is at or below eighty percent (80%) of the area median income or any other federally designated target population.

(g) As used in this chapter, "education" means any type of scholastic instruction or scholarship assistance to an individual who resides in an economically disadvantaged area that enables the individual to prepare for better life opportunities.

(h) As used in this chapter, "enterprise zone" means an enterprise zone created under IC 5-28-15 **or a railroad redevelopment zone created under IC 5-28-35.**

(i) As used in this chapter, "job training" means any type of instruction to an individual who resides in:

- (1) an economically disadvantaged area; or
- (2) an economically disadvantaged household;

that enables the individual to acquire vocational skills so that the individual can become employable or be able to seek a higher grade of employment.

(j) As used in this chapter, "neighborhood assistance" means either:

- (1) furnishing financial assistance, labor, material, and technical advice to aid in the physical or economic improvement of any part or all of an economically disadvantaged area; or
- (2) furnishing technical advice to promote higher employment in any neighborhood in Indiana.

(k) As used in this chapter, "neighborhood organization" means any organization, including but not limited to a nonprofit development corporation doing both of the following:

- (1) Performing community services:
 - (A) in an economically disadvantaged area; or
 - (B) for an economically disadvantaged household.
- (2) Holding a ruling:
 - (A) from the Internal Revenue Service of the United States

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Department of the Treasury that the organization is exempt from income taxation under the provisions of the Internal Revenue Code; and

(B) from the department of state revenue that the organization is exempt from income taxation under IC 6-2.5-5-21.

(l) As used in this chapter, "person" means any individual subject to Indiana gross or adjusted gross income tax.

(m) As used in this chapter, "state fiscal year" means a twelve (12) month period beginning on July 1 and ending on June 30.

(n) As used in this chapter, "state tax liability" means the taxpayer's total tax liability that is incurred under:

(1) IC 6-3-1 through IC 6-3-7 (the adjusted gross income tax); and

(2) IC 6-5.5 (the financial institutions tax);

as computed after the application of the credits that, under IC 6-3.1-1-2, are to be applied before the credit provided by this chapter.

(o) As used in this chapter, "tax credit" means a deduction from any tax otherwise due and payable under IC 6-3 or IC 6-5.5.

SECTION 7. IC 6-3.1-10-1, AS AMENDED BY P.L.4-2005, SECTION 56, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JANUARY 1, 2011]: Sec. 1. As used in this chapter, "enterprise zone" means an enterprise zone created under IC 5-28-15 **or a railroad redevelopment zone created under IC 5-28-35.**

SECTION 8. [EFFECTIVE JULY 1, 2010] (a) **The Indiana department of transportation shall update the state's rail plan to comply with all requirements imposed by the Federal Railroad Administration before January 1, 2012.**

(b) **This SECTION expires January 1, 2013.**

SECTION 9. [EFFECTIVE JANUARY 1, 2011] (a) **IC 6-1.1-45-13, as added by this act, applies to assessments made after February 28, 2011, and property taxes first due and payable after December 31, 2011.**

(b) **IC 6-3-3-10.5, as added by this act, applies to taxable years beginning after December 31, 2010.**

(c) **IC 6-3-2-8, IC 6-3.1-7-1, IC 6-3.1-9-1, and IC 6-3.1-10-1, each as amended by this act, apply to taxable years beginning after December 31, 2010.**

(d) **This SECTION expires January 1, 2012.**

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